

STATE OF NEW HAMPSHIRE

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WATER COUNCIL
Docket No. 03-19-WC

Appeal Of Pennichuck Brook Watershed Council

**RAIS-CREST, LLC'S OBJECTION TO PENNICHUCK BROOK WATERSHED
COUNCIL'S MOTION FOR REHEARING DATED JANUARY 8, 2004**

NOW COMES Rais-Crest, LLC, a New Hampshire limited liability company, by and through its attorneys, Winer and Bennett, LLP, and hereby objects to Pennichuck Brook Watershed Council's ("PBWC") Motion for Rehearing of January 8, 2004. In support hereof, Rais-Crest, LLC states as follows:

Background

1. Rais-Crest, LLC is the developer of the residential community to be known as Summerfield Condominium in Amherst, New Hampshire.
2. Various permits for Summerfield Condominium (the "Project") were issued to Rais-Crest, LLC during 2003 (or were issued to TANA Properties Limited Partnership, one of the present owners of the land to be developed into Summerfield Condominium), including DES Site Specific Permit #WPS-6467, DES Subdivision Approval #SA2003004123, and various subsurface sewage disposal septic system approvals, all as are more particularly identified in the Response to Motion for Reconsideration of the Department of Environmental Services ("DES"), dated November 5, 2003.
3. PBWC filed a Motion for Reconsideration regarding the aforementioned permits and approvals which Motion for Reconsideration was denied in all respects by DES as evidenced by the aforementioned Response to Motion for Reconsideration by DES.

4. Apparently in the latter part of the day of December 5, 2003, PBWC attempted to file its Petition of Appeal (Notice of Appeal) (the 30th day after the date of decision and thus the last date for filing), but because of procedural deficiencies, was not able to complete the filing of the Notice of Appeal. PBWC attempted to correct these procedural deficiencies by documentation filed with the Water Council on December 8, 2003, which date was beyond the appeal deadline.

5. The Water Council issued its Decision & Order on December 11, 2003 summarily dismissing PBWC's Notice of Appeal.

6. On or about January 8, 2004, PBWC filed its Motion for Rehearing with the Water Council requesting that it (PBWC) "be heard" presumably with reference to its underlying Notice of Appeal.

Objection

7. Rais-Crest, LLC, being the permittee and party in interest, hereby objects to PBWC's Motion for Rehearing.

8. Rais-Crest, LLC's objections are based upon the following fundamental factors:

- a. PBWC's underlying Notice of Appeal was procedurally flawed when PBWC attempted to file it on December 5, 2003 (the thirtieth (30th) and last day for filing).
- b. Under Env-WC 203.09(a), any request to extend a time limit in an of itself must be filed in writing with the Water Council prior to the expiration of the prescribed period. (Emphases added.)
- c. In the present case, PBWC failed to file its written request for an extension of time before the expiration of the thirty (30) day deadline (December 5, 2003), but rather filed the request for extension of time late (on December 8, 2003).
- d. Since the request for extension of time itself was late, then the Water Council correctly concluded in its Decision & Order of December 11, 2003 that PBWC's Notice of Appeal was not in compliance with the thirty (30) day filing requirement of Env-WC 203.02.

- e. Furthermore, extensions of time should not be granted to the filing of the petition or notice of appeal which initiates a case, but rather should be reserved for procedural deadlines during the processing of a case. To do otherwise would, in effect, render the thirty (30) day appeal period itself indefinite;

9. Even apart from the fact that the Notice of Appeal was not timely filed, the Notice of Appeal is not in compliance with Env-WC 203.03(b) which sets forth the required contents of an appeal. In particular:

- a. PBWC's Notice of Appeal does not contain a clear and concise statement of the relief sought, but rather is a rambling and incoherent combination of disconnected statements with quotations from portions of DES's Response to Motion for Reconsideration;
- b. The sheer length and discontinuity of PBWC's Notice of Appeal renders it an oppressive pleading;
- c. PBWC's Notice of Appeal does not contain a concise and explicit statement of the facts upon which the Water Council is expected to reply in granting the relief (as required under Env-WC 203.03(b)(3)), but rather rambles through many facts unrelated to the Site Specific Permit itself and burdens the Water Council to review irrelevant documents, some of which pertain to presentations before the local Zoning Board of Adjustment, others of which pertain to cases unrelated to Summerfield Condominium, and others which are citations to New Hampshire law not on point; and
- d. The focus of PBWC's Notice of Appeal pertains to the subdivision and septic system permits, not the Site Specific Permit. As a result, the vast bulk of the Petition of Appeal is not even relevant to a matter appealable to the Water Council since, as noted by DES in their Response to Motion for Reconsideration, the subdivision permit and septic system permits are appealable to the Superior Court (not to the Water Council).

10. In its Response to Motion for Reconsideration, when ruling on the Site Specific Permit, DES concluded that "because the PBWC has not provided any basis on which to find that the issuance of Site Specific Permit #WPS-6467 is unlawful and unreasonable, the request for reconsideration of this permit is denied." See page 2 of the Response to Motion for Reconsideration.

11. Similarly, PBWC's Notice of Appeal is without merit. PBWC has provided no substantive rationale upon which the Water Council could possibly find error in DES's ruling.

12. PBWC's Motion for Rehearing itself fails to comply with Env-WC 203.29(b) which sets forth the requirements for a motion for rehearing, as evidenced by a simple examination of PBWC's Motion for Rehearing.

13. For example, PBWC sets forth no substantive basis for the granting of its Motion for Rehearing but rather uses as its basis "[l]abors to obey the rules."

14. In light of each of the foregoing independent reasons, the Water Council should deny PBWC's Motion for Rehearing.

WHEREFORE, it is respectfully requested that the Water Council deny PBWC's Motion for Rehearing.

Respectfully submitted,
RAIS-CREST, LLC
By its attorneys,
Winer and Bennett, LLP

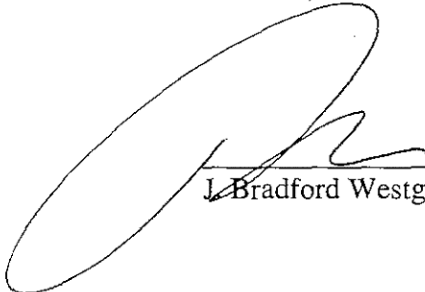
Dated: January 13, 2004

By: 

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Certificate of Service

I certify that an original and twenty (20) copies of this Objection to Motion for Rehearing have been delivered this day to the Water Council, Attn: Michael Sclafani, and that copies of this Objection to Motion for Rehearing have been mailed this day to Michael P. Nolin, Commissioner, New Hampshire Department of Environmental Services, Harry T. Stewart, P.E., Director, Water Division, New Hampshire Department of Environmental Services, Mark B. Harbaugh, DES Legal Unit, Richard J. de Seve, DES WD, Tana Properties Limited Partnership (c/o The Tamposi Company), Town of Amherst (c/o Charles Tiedemann, Zoning Administrator), Pennichuck Brook Watershed Council, c/o Allan Fuller, Chairman, and James Edwards, Meridian Land Services, Inc.



J. Bradford Westgate, Esquire